



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-14098

Dear Mr. Reinwand:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393549 (Police Dept. Reference No. 1324-070110).

The Arlington Police Department (the "department") received a request for all police reports involving a named individual, including photos, during a specified time period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information

indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning a named individual. Thus, we find that this request implicates this individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted incident report numbers 08-47917, 08-78673, 09-3228, 09-78028, and 09-78857 that do not list the named individual as a suspect, arrestee, or criminal defendant; thus this information is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note that portions of report numbers 08-78673, 09-78028, and 09-78857 contain information that is highly intimate or embarrassing and of no legitimate public interest. The department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. Although you generally assert the remaining portions of report numbers 08-78673, 09-78028, and 09-78857 and report numbers 08-47917 and 09-3228 are protected by common-law privacy, you have failed to provide any arguments explaining how any of this information constitutes highly intimate or embarrassing information that is not of legitimate concern to the public. Thus, you have failed to demonstrate the applicability of common-law privacy to the remaining portions of report numbers 08-78673, 09-78028, and 09-78857 and report numbers 08-47917 and 09-3228. Consequently, the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that report numbers 08-47917, 08-78673, 09-3228, 09-78028, and 09-78857 contain information subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle information we have marked in report numbers 08-47917, 08-78673, 09-3228, 09-78028, and 09-78857 under section 552.130 of the Government Code.

Report numbers 08-78673 and 09-78857 also contains information subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owner of the addresses has affirmatively consented to their release. *See id.* § 552.137(b).

In summary, to the extent the department maintains records that depict the named individual as a criminal defendant, suspect, or arrestee, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in report numbers 08-78673, 09-78028, and 09-78857 under section 552.101 in conjunction with common-law privacy. The department must withhold the Texas driver's license numbers we have marked in report numbers 08-47917, 08-78673, 09-3228, 09-78028, and 09-78857 under section 552.130 of the Government Code. The e-mail addresses we have marked in report numbers 08-78673 and 09-78857 must be withheld under section 552.137 of the Government Code, unless the owner of the addresses has affirmatively consented to their release.² The remaining information must be released.³

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³The remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code § 552.147(b).*

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', is written over the typed name.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 393549

Enc. Submitted documents

c: Requestor
(w/o enclosures)